UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In the Matter of THE WALT DISNEY COMPANY,

Petitioner,

-against-

NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES & TECHNICIANS, THE BROADCASTING AND CABLE TELEVISION WORKERS SECTOR OF THE COMMUNICATION WORKERS OF AMERICA, LOCAL 16, AFL-CIO, CLC,

Respondent.

Civil Action No. 10 Civ. 5982 (SHS)

REPLY AFFIDAVIT
OF GRACE YANG

STATE OF CALIFORNIA)
) ss.:
COUNTY OF LOS ANGELES)

GRACE YANG, being duly sworn deposes and says,

1. I am employed as a manager in the special reviews group in the Management Audit department ("MA") of The Walt Disney Company ("TWDC"). I submit this affidavit in further support of TWDC's motion for a protective order and/or to quash the Subpoena, and in opposition to the cross-motion of Respondent National Association of Broadcast Employees & Technicians, the Broadcasting and Cable Television Workers Sector of the Communication Workers of America, Local 16, AFL-CIO, CLC ("NABET-CWA, Local 16") to compel.[1] I have personal knowledge of the facts stated herein, unless otherwise indicated.

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[1] Unless otherwise stated, defined terms herein have the same meaning as in my August 4, 2010 Affidavit.

2. I have reviewed the August 9, 2010 Affidavit of David Mintz, counsel for NABET-CWA, Local 16, and respond herein to some of the numerous inaccuracies and distortions of my hearing testimony contained therein. Contrary to Mr. Mintz, ABC Inc. did not "turn over" the investigation at issue to TWDC. Rather, as set forth in my August 4, 2010 Affidavit, upon TWDC's receipt of the complaint from the Studio concerning the unauthorized release of the Studio's screener on the internet, MA and TWDC's corporate legal anti-piracy department partnered with ABC's Labor Relations department to investigate the allegations that ultimately led to Mr. Pinkava's termination. *See, also,* pages 57-58 of the transcript of my June 23, 2010 arbitration hearing testimony ("June 23 Tr."); copies of the cited pages of the June 23 Tr. are annexed hereto as Exhibit A. Also contrary to Mr. Mintz, a majority of the investigation was directed from California, including Mr. Pinkava's interview, in which I participated by telephone, not in person. *Id.* at page 124:21.

3. Mr. Mintz is also wrong in asserting that the computer forensic report of Mr. Pinkava's computer that was marked at the hearing as Employer Exhibit 8 was "compiled" or "extracted" from the privileged memorandum (the "Memorandum") at issue in these motions. A copy of Employer Exhibit 8 is annexed hereto as Exhibit B. As I made clear during my July 13, 2010 testimony, Employer Exhibit 8 was created in preparation for the arbitration. *See* transcript of my July 13, 2010 arbitration hearing testimony ("July 13 Tr."), at 258:5-7, copies of the cited pages of which are annexed hereto as Exhibit C. All of the information contained in Employer Exhibit 8 was extracted from a forensic report prepared by Tim Gruber that contained forensic computer information for Mr. Pinkava (the "Gruber Report"). *See* Exhibit C, July 13 Tr. at 258:21-259:7; 263-266:3. The Gruber Report also contains a summary of the investigation's findings. *See* Exhibit C, July 13 Tr. at 189-190. In fact, at the hearing, Mr. Mintz

introduced the Gruber Report into evidence as Union Exhibit 3 to compare the two reports (Employer Exhibit 8 and Union Exhibit 3) and had me confirm they were virtually identical with respect to the material pertaining to Mr. Pinkava. *See* Exhibit C, July 13 Tr. at 263-265; a copy of Union Exhibit 3 is annexed hereto as Exhibit D. During the July 13, 2010 hearing, I repeatedly confirmed to Mr. Mintz that Employer Exhibit 8 was extracted almost word for word from the Gruber Report (Union Exhibit 3), thereby leaving no doubt that Employer Exhibit 8 was not extracted or compiled from the Memorandum as Mr. Mintz now asserts. *Id.* For purposes of clarity, the document to which I am referring at line 24, page 148 of the June 23 Transcript is the privileged memorandum that I prepared to obtain legal advice from Jacob M. Yellin, TWDC's in-house corporate counsel, and which is the subject of the Subpoena. However, Employer Exhibit 8 was neither extracted nor compiled from that privileged memorandum. In fact, as I testified, the only document that I used to create Employer Exhibit 8 was Union Exhibit 3. *See* Exhibit C, July 13 Tr. at 265.

4. As stated in my August 4, 2010 Affidavit, the Memorandum contains the conclusions, recommendations and actions taken as a result of the investigation that resulted from the Studio's complaint. In this regard, the Memorandum summarizes the conclusions, recommendations and actions concerning the fifteen employees who were interviewed in connection with MA's investigation. It is my understanding that any notes that I took during the interviews that I attended have been turned over to respondent's counsel.

5. Finally, there is also no basis for Mr. Mintz's statement that I reviewed the Memorandum in preparation for my July 13, 2010, testimony or to refresh my recollection. Had he not cut me off in the middle of my answer, Mr. Mintz would have learned that I reviewed the Memorandum in the ordinary course of my business duties as a special reviews manager of MA

and as part of my communications with Mr. Yellin to obtain his legal advice, and that there was no correlation between my review of the Memorandum and my testimony at the arbitration on July 13, 2010.

6. Wherefore, for the foregoing reasons, I respectfully request that the Court grant TWDC's motion in its entirety and quash the Subpoena and deny respondent's cross-motion.

GRACE YANG

Sworn to before me on
this 13th day of August, 2010

Notary Public

MARTHA ANN MCLAUGHLIN
COMM. #1781910
NOTARY PUBLIC-CALIFORNIA
Los Angeles County
Comm. Expires Nov 24, 2011

In re THE WALT DISNEY CO. v. NABET-CWA, Local 16
Civil Action No. 10 Civ. 5982 (SHS)

Yang Reply Affidavit

Exhibit A

ARBITRATION

In the matter between:	)	
	)	
NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS -- CWA LOCAL 16, AFL-CIO, CLC	)	No. AN10-11
-and-	)	
AMERICAN BROADCAST COMPANY, INC.	)	
------------------------------	)	

77 West 66th Street

New York, New York

Thursday, June 23, 2010

B E F O R E:

BONNIE SIBER WEINSTOCK, Arbitrator

Reported by:
PENNY SHERMAN
JOB NO. 311070

standards of business conduct in their employee orientation. In addition to that, they receive a copy in their compliance training of the standards of business conduct.

MR. MINTZ: Did you say annual compliance training?

THE WITNESS: Annual compliance training. And it is also available in our company's intranet. It's also available through your supervisors, through your human resources department. It's available within the company.

MR. MINTZ: Okay.

Q. Now, let's -- let's turn to the case at hand.

At some point earlier this year, did you participate in an investigation with the company's anti-piracy group?

A. Yes, I did.

Q. Okay. And who did you work with from the company's anti-piracy group in that investigation?

A. I worked primarily with Joe Woodall.

Q. Who is Joe Woodall?

Direct -- Yang

A. He is the director of corporate anti-piracy. I also worked with Jonathan Whitehead.

Q. Okay.

A. He's the VP of corporate anti-piracy.

Q. Okay.

A. As well as Chris Sendejas, who is also -- S-E-N-D-E-J-A-S -- who's another director within corporate anti-piracy.

Q. Okay. And what did that investigation involve?

MR. MINTZ: Excuse me, I just didn't get the second name, John something.

MS. MOONEY: Chris Sendejas.

MR. MINTZ: No, John something.

MS. MOONEY: Whitehead.

MR. MINTZ: Okay.

THE WITNESS: Jonathan Whitehead.

Q. What did that investigation involve?

A. I was contacted by Jonathan Whitehead, our head of corporate anti-piracy for content -- creative content, which includes film and television shows. He informed me that NBC Universal's attorneys contacted him in regards to a

Direct -- Yang

Q. Okay. All right. And when did you interview Mr. Pinkava?

A. It was on February 17th of this year.

Q. Okay. And can you give us who was present, where you were, just the details?

A. Sure. I was in Glendale, in my office. I participated by phone.

Q. Okay.

A. In person, Scott Pinkava was there, Kathy Henry, the union representative, was there.

Q. Okay.

A. Renu Thomas was there representing management and yourself.

Q. Okay. And was there anyone with you in California?

A. Also by phone was Joe Woodall from corporate anti-piracy and Chris Sendejas and you.

Q. Okay. And you mentioned that this was conducted over the phone?

A. Yes, that's correct.

Q. It wasn't a video conference, you couldn't see --

A. No.

Q. Okay. Who conducted the interview?

it comes.

I do want to see if we can accomplish as much as possible today with Ms. Yang and her testimony. So I will provisionally admit Employer Exhibit 8 subject to any en camera inspection I perform on the larger document, which then will enable the union to determine whether this is, in fact, a fair and accurate copy and complete copy of what it purports to be. Okay?

MR. MINTZ: The only other thing I might ask the witness on voir dir is to describe what the underlying documents are that were related to this document and her investigation.

THE WITNESS: Certainly.

The underlying document comes from a computer forensics report of all computers that we investigated in this matter.

Q. Is there a document that has your recommendations or your analysis or your conclusions?

A. There is such a document.

MR. MINTZ: Okay, I would also like to

Direct -- Yang

C E R T I F I C A T E

STATE OF NEW JERSEY)
: ss.
COUNTY OF MONMOUTH)

I, PENNY SHERMAN, a Notary Public within and for the State of New York, do hereby certify that the within is a true and accurate transcript of the proceedings taken on June 23, 2010.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of June, 2010.

____

PENNY SHERMAN

In re THE WALT DISNEY CO. v. NABET-CWA, Local 16
Civil Action No. 10 Civ. 5982 (SHS)

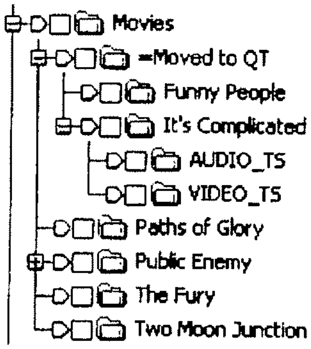
Yang Reply Affidavit

Exhibit B

Computer Forensics Evidence for Scott Pinkava

Device Name	IP Address	Program	Installed By	Install Date	Last Used	Removed
Maya 1 util pc	167.13.14.17	DVDFab	PinkavS	5/21/2009	1/5/2010	2/16/2010

A search resulted in finding a folder on the "G" drive of this computer at G:\Movies\=Moved to QT\It's Complicated. The folder structure of the "G:\Movies" folder is depicted below:



Analysis of the Windows NTFS permissions on the objects contained in the "Movies" folder and sub-folders revealed the owner of those directories, subdirectories, and files to be the user with Security Identifier (SID) S-1-5-21-3171633924-1924068845-2714224623-1805 who was identified as user **pinkavs** (Pinkava, Scott). The files located in the "It's Complicated" folder were extracted to the examiner's machine and were found to be the component files for a "screener" DVD copy of the movie "Its Complicated".

Examiner was able to create a full DVD copy of the subject movie and play it on the examiner's computer. Selected screen shots are provided at Appendix A to this report.

Analysis of the metadata associated with the subject files indicate they were created/copied to this location on 12/18/2009 at approximately 1411.

There were also several software tools found on the computer that could be used to defeat the copy protection found on commercial DVDs as well as programs for editing, copying, and mastering DVDs. These included **DVD Shrink**, **DVD Decrypter**, various **Adobe** video editing tools and **Nero** DVD burning software.

In addition to the subject movie, evidence was also found that this user copied other movies including "Funny People", "Paths of Glory", "Two Moon Junction", "Little Deiter Needs to Fly", "Van Wilder Unrated", "Meatloaf and the Melbourne Symphony", "The Thin Red Line", "Looney Tunes Volumes 2, 3, and 4", "Tenacious D Pick of Destiny", "Meet Karl Pilkington - Ricky Gervais - Politics", "Dirty Harry", and "One Flew Over the Cuckoo's Nest", "Futurama", and "Hellgate London". Several of these movies including "The Fury", "Paths of Glory" and "Two Moon Junction" had actually been rendered to DVD .ISO format which is a popular format for sharing and transporting the contents of a DVD or CD. There is no evidence that any movie files were in a format compatible with the iPod (e.g., m4a).

This machine also contained Windows system restore points data. A listing of this data is provided in Appendix B to this report.

"Movies" folder metadata and folder structure:

Name	Movies
Last Accessed	02/08/10 12:40:56
File Created	12/18/09 13:45:48
Last Written	01/05/10 17:33:33
Entry Modified	01/05/10 17:33:33
File Acquired	02/08/10 18:32:37
Logical Size	4,096
Initialized Size	4,096
Physical Size	4,096
Starting Extent	1C-C36967322
Full Path	MAYA_1HP, 167.13.14.60·1\C\Movies
Bookmark Path	NoName

"=Moved to QT" folder metadata:

Name	=Moved to QT
Last Accessed	02/08/10 12:40:58
File Created	01/05/10 17:33:23
Last Written	01/05/10 17:33:33
Entry Modified	01/05/10 17:33:33
File Acquired	02/08/10 18:32:37
Full Path	MAYA_1HP, 167.13.14.60·1\C\Movies\=Moved to QT

Permissions

[redacted]		
Administrators	S-1-5-32-544	Allow
System	S-1-5-18	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Allow

Creator Owner	S-1-3-0	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Owner
Domain Users	S-1-5-21-3171633924-1924068845-2714224623-513	Group

---

"Funny People" folder metadata:

Name	Funny People
Last Accessed	02/08/10 12:40:58
File Created	12/18/09 14:32:11
Last Written	12/18/09 14:38:24
Entry Modified	01/05/10 17:33:33
File Acquired	02/08/10 18:32:37
Full Path	MAYA_1HP, 167.13.14.60·1\C\Movies\=Moved to QT\Funny People

Permissions

[redacted]		
Administrators	S-1-5-32-544	Allow
System	S-1-5-18	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Allow
Creator Owner	S-1-3-0	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Owner
Domain Users	S-1-5-21-3171633924-1924068845-2714224623-513	Group

---

"It's Complicated" folder metadata:

Name	It's Complicated
Description	Folder
Last Accessed	02/08/10 12:40:58
File Created	12/18/09 14:11:22
Last Written	12/18/09 14:17:55
Entry Modified	01/05/10 17:33:33
File Acquired	02/08/10 18:32:37
Full Path	MAYA_1HP, 167.13.14.60·1\C\Movies\=Moved to QT\It's Complicated

Permissions

[redacted]		
Administrators	S-1-5-32-544	Allow
System	S-1-5-18	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Allow
Creator Owner	S-1-3-0	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Owner
Domain Users	S-1-5-21-3171633924-1924068845-2714224623-513	Group

"Paths of Glory" folder metadata:

Name	Paths of Glory
Description	Folder
Last Accessed	02/08/10 12:44:13
File Created	01/04/10 17:11:51
Last Written	01/04/10 17:11:57
Entry Modified	01/05/10 14:14:32
File Acquired	02/08/10 18:32:37

Full Path ABC\ (MAYA_1HP, 167.13.14.60)·1\C\Movies\Paths of Glory

Permissions

Administrators	S-1-5-32-544	Allow
System	S-1-5-18	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Allow
Creator Owner	S-1-3-0	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Owner
Domain Users	S-1-5-21-3171633924-1924068845-2714224623-513	Group

"Public Enemy" folder metadata:

Name	Public Enemy
Description	Folder
Last Accessed	02/08/10 12:44:12
File Created	12/18/09 13:46:29
Last Written	12/18/09 13:53:43
Entry Modified	12/18/09 13:53:43
File Acquired	02/08/10 18:32:37
Full Path	MAYA_1HP 167.13.14.60·1\C\Movies\Public Enemy
Short Name	PUBLIC~1
Sequence ID	1

Permissions

Administrators	S-1-5-32-544	Allow
System	S-1-5-18	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Allow
Creator Owner	S-1-3-0	Allow

Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Owner
Domain Users	S-1-5-21-3171633924-1924068845-2714224623-513	Group

"The Fury" folder metadata:

Name	The Fury
Description	Folder
Last Accessed	02/08/10 12:44:13
File Created	01/05/10 11:53:47
Last Written	01/05/10 11:53:55
Entry Modified	01/05/10 11:53:55
File Acquired	02/08/10 18:32:37
Full Path	MAYA_1HP 167.13.14.60 ·1\C\Movies\The Fury

Permissions

Administrators	S-1-5-32-544	Allow
System	S-1-5-18	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Allow
Creator Owner	S-1-3-0	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Owner
Domain Users	S-1-5-21-3171633924-1924068845-2714224623-513	Group

"Two Moon Junction" folder metadata:

Name	Two Moon Junction
Description	Folder
Last Accessed	02/08/10 12:44:13
File Created	01/05/10 11:53:59
Last Written	01/05/10 14:14:10
Entry Modified	01/05/10 14:14:10
File Acquired	02/08/10 18:32:37
Full Path	MAYA_1HP 167.13.14.60 ·1\C\Movies\Two Moon Junction

Permissions

[redacted]		
Administrators	S-1-5-32-544	Allow
System	S-1-5-18	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Allow
Creator Owner	S-1-3-0	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Owner
Domain Users	S-1-5-21-3171633924-1924068845-2714224623-513	Group

In re THE WALT DISNEY CO. v. NABET-CWA, Local 16
Civil Action No. 10 Civ. 5982 (SHS)

Yang Reply Affidavit

Exhibit C

ARBITRATION

In the matter between:

NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS -- CWA LOCAL 16, AFL-CIO, CLC

-and-

AMERICAN BROADCAST COMPANY, INC.

No. ANIO-11

77 West 66th Street
New York, New York
Tuesday, July 13, 2010

B E F O R E:

BONNIE SIBER-WEINSTOCK, Arbitrator

Reported by:
PENNY SHERMAN
JOB NO. 311556

Cross -- Yang

A. We did not find other evidence of It's Complicated on our Company machines.

Q. Other than, for example, you found evidence of Ms. Ventura watching It's Complicated on a Company machine?

A. That's correct.

Q. And you found evidence that Karen Steckler watched It's Complicated on a Company machine on December 24th at 7:45, did you not?

A. We did find evidence that she watched it on a Company machine. I would again have to verify the dates and the time with my notes.

Q. Thank you. Okay.

Now, I also had an opportunity to review your e-mails, or the e-mails that were collected, not your e-mails.

A. Okay.

Q. I didn't want to scare you.

A. I'm not scared, I know it's Company property and it can be reviewed.

Q. I had a chance to review the e-mails that you reviewed. Let me ask you this.

The employees whose e-mails you reviewed, communicated about passing around movies,

Cross -- Yang

did they not?

A. Several employees, yes, we found evidence they were sharing movies.

Q. In fact, it almost seemed like they have a movie club, correct?

MS. MOONEY: Objection.

THE ARBITRATOR: Sustained.

Q. Now, what document did you produce, based on your investigation, that summarized for the Company which employees reviewed or had copies of It's Complicated, at ABC?

A. The most complete document would be a report that I prepared for legal advice to an attorney named Jackie Yellin.

Q. So that is the only document, which you are now calling that you prepared for legal advice, that summarizes your findings as to who viewed or had a copy of It's Complicated?

A. That document certainly gives a summary of all the evidence that we found in our investigation. The other documents that would contain that information would be Tim Gruber's computer forensic reports.

Q. So there's that document you are

Cross -- Yang

8?

MS. MOONEY: Let me get you a copy.
Computer forensics for Scott Pinkava.
Q. Company Exhibit 8 was the document that you created in preparation for this arbitration?
A. Correct.
Q. That was introduced through you, too, right?
A. Correct.
Q. On page 4 of that document, you have the data relating to It's Complicated?
A. Yes.
Q. Yes. And just for my own edification, Ms. Yang, if you look at, on 12/18 this It's Complicated file was created at 14:11 as opposed to 14:32, which is on Company 7. Do you see that?
A. I see that.
Q. Why is there a different time?
A. I'm not sure. I would ask Tim Gruber.
Q. Well, let me ask you this: Is Company 8 a computer-generated form or a hand-generated document?
A. Exhibit 8?
Q. Uh-huh.

Cross -- Yang

A. This is a hand-generated report.
Q. Okay. So you can't explain why there's a different time for when these files were created?
A. That's correct. This was information extracted from Tim Gruber's forensic report related just to Mr. Pinkava.
Q. Do you think there's a mistake on these documents, or do you think that the software was showing -- what do you know? You don't know?
A. I don't know. I would ask Tim.
Q. Did you ask Tim?
A. I didn't ask him about the differences in time.
Q. Okay. So, this, these restore points -- this is, so I understand this, this restore points are on the broadcast computer, correct?
A. Correct.
Q. That's Company 7. And Company 8, even though it is for the same files, it has a slightly different time, the difference between 14:11 and 14:32, correct?
A. Yes, I see here.
Q. Okay. Now, you testified before that the IP address for the NENA computer, the Maya 1

Cross -- Yang

Q. -- anyone who had It's Complicated had already copied and decrypted it, could have put this on this computer, right?

A. It's a possibility.

Q. My point is, you have no evidence Mr. Pinkava or anyone else actually used decryption software on It's Complicated?

A. That's correct.

MR. MINTZ: Madam Arbitrator, I just need a minute.

THE ARBITRATOR: Sure.

Q. Now, looking at Company Exhibit 8.

A. Yes.

Q. Which, you testified that's a report you created?

A. Yes, I created this report. Again, there was an extraction from Tim Gruber's forensic report.

Q. Ms. Yang, with all due respect, I mean this, sincerely, isn't this report that you created word for word from the Gruber report?

A. Yes.

Q. There's one sentence difference?

A. Right.

Cross -- Yang

Q. Other than the one sentence, it's a word-for-word extraction?

A. Right. We extracted everything from Mr. Gruber's report related to Pinkava for this.

Q. I'm talking about, the narrative is word for word from Mr. Gruber's report, except for one sentence, correct?

A. This one sentence, this part here is an extraction from Susan Renner's report.

MS. MOONEY: Which part are you referring to?

THE WITNESS: The very top of the computer forensic.

MR. MINTZ: Just the heading.

A. Other than that, it should be directly from Tim's computer forensic's report.

MS. MOONEY: If you don't have it David, I do.

MR. MINTZ: No problem, I have it.

(Discussion off the record.)

MR. MINTZ: I would like to mark this as --

THE ARBITRATOR: Union 3.

MR. MINTZ: Union 3.

Cross -- Yang

(Union Exhibit 3, Grace Yang's report, marked for identification, as of this date.)

THE ARBITRATOR: Thank you.

MS. MOONEY: Thank you.

Q. Now, have you seen Union 3 before?

A. Yes, I have.

Q. And just so we are clear, Union 3, just turning to page 4 of Union 3 -- I'm sorry, I withdraw that.

So Company 8 was produced from Union 3?

A. Correct; for the most part, yes.

Q. When you say, for the most part, I mean, virtually everything Mr. Gruber wrote in Union 3 is in your Company 8, right?

A. That's right.

Q. Except for that last sentence, which Mr. Gruber did not have when he did the report, and that last sentence is on Company 8, where it says, the second to the last sentence, on page 1, There is no evidence that any movie files were in a format compatible with the iPod, correct?

A. Correct. It was added. I asked him to go back and follow up after Mr. Pinkava's interview.

Cross -- Yang

Q. So you added that?

A. Right.

Q. Now, looking at both -- looking at Union 8 --

THE ARBITRATOR: Employer 8 or Union 3?

MR. MINTZ: I'm sorry, Company 8 and Union 3.

Q. Do you see, Moved to QT and Funny People, It's Complicated --

A. Yes.

THE ARBITRATOR: Go ahead. You just read it quickly, go ahead.

Q. -- that diagram of the folders?

A. Yes.

Q. Is that what appears on the screen in the computer?

A. I believe this is what Tim took a snapshot of using the program, Encase.

Q. When you turn on the computer, is this what you see on the screen, or is this produced by Encase, or don't you know?

A. I would ask Tim that.

Q. I know, but I'm asking you. You don't know?

Recross -- Gruber

C E R T I F I C A T E

STATE OF NEW JERSEY)
: ss.
COUNTY OF MONMOUTH)

I, PENNY SHERMAN, a Notary Public within and for the State of New Jersey, do hereby certify that the within is a true and accurate transcript of the proceedings taken on JULY 13, 2010.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of July, 2010.

____
PENNY SHERMAN

In re THE WALT DISNEY CO. v. NABET-CWA, Local 16
Civil Action No. 10 Civ. 5982 (SHS)

Yang Reply Affidavit

Exhibit D

REPORT OF COMPUTER FORENSIC EXAMINATION	CASE NUMBER 2010-002 Supplement 1 PAGE 1 of 11 PAGES

REQUESTOR	REQUESTOR'S DEPARTMENT	REQUESTOR'S PHONE #
Grace F. Yang	CMA Special Reviews	818-553-4086

EXAM PRETEXT/CASE SUMMARY

Examination was requested of five additional computers that had been used by various members of the ABC Television Graphics Art team in New York to determine if any of the computers had been used to view, duplicate, or upload an NBC/Universal Pictures screener DVD of the movie "Its Complicated" (the subject movie) and to determine the identities of any staff members who may be involved. This is a supplement to the initial report on this matter which includes many of the case details.

EXAMINATION FINDINGS

ITEM NUMBER	ITEM DESCRIPTION	SERIAL NUMBER	MODEL NUMBER
1	Computer Workstation	MAYA_1HP	Not Applicable

FINDINGS SUMMARY

Examination of this computer was undertaken after ABC TV Director Ralph Maese conducted a Windows search on the five computers of interest for any occurrences of the term "Its Complicated" or "It's Complicated".

This search resulted in finding a folder on the "G" drive of this computer at G:\Movies\=Moved to QT\It's Complicated. The folder structure of the "G:\Movies" folder is depicted below:

- Movies
  - =Moved to QT
    - Funny People
    - It's Complicated
      - AUDIO_TS
      - VIDEO_TS
  - Paths of Glory
  - Public Enemy
  - The Fury
  - Two Moon Junction

Analysis of the Windows NTFS permissions on the objects contained in the "Movies" folder and sub-folders revealed the owner of those directories, subdirectories, and files to be the user with Security Identifier (SID) S-1-5-21-3171633924-1924068845-2714224623-1805 who was identified as user **pinkavs** (Pinkava, Scott). The files located in the "It's Complicated" folder were extracted to the examiner's machine and were found to be the component files for a "screener" DVD copy of the movie "Its Complicated".

Examiner was able to create a full DVD copy of the subject movie and play it on the examiner's computer. Selected screen shots are provided at Appendix B to this report.

Analysis of the metadata associated with the subject files indicate they were created/copied to this location on 12/18/2009 at approximately 1411.

There were also several software tools found on the computer that could be used to defeat the copy protection found on commercial DVDs as well as programs for editing, copying, and mastering DVDs. These included **DVD Shrink**, **DVD Decrypter**, various **Adobe** video editing tools and **Nero** DVD burning software.

In addition to the subject movie, evidence was also found that this user copied other movies including "Funny People", "Paths of Glory", "Two Moon Junction",

REPORT OF COMPUTER FORENSIC EXAMINATION	CASE NUMBER 2010-002 Supplement 1
	PAGE 2 of 11 PAGES

"Little Deiter Needs to Fly", "Van Wilder Unrated", "Meatloaf and the Melbourne Symphony", "The Thin Red Line", "Looney Tunes Volumes 2, 3, and 4", "Tenacious D Pick of Destiny", "Meet Karl Pilkington - Ricky Gervais - Politics", "Dirty Harry", and "One Flew Over the Cuckoo's Nest", "Futurama", and "Hellgate London". Several of these movies including "The Fury", "Paths of Glory" and "Two Moon Junction" had actually been rendered to DVD .ISO format which is a popular format for sharing and transporting the contents of a DVD or CD.

Because of time constraints, the examiner was not able to analyze the Internet history or other artifacts for this user.

Additional study would need to be undertaken to determine if there was any evidence on this computer that this user uploaded the movie to the Internet.

FORENSIC METHODOLOGY USED

The software used to image and examine the media devices was Guidance Software's Encase Enterprise Edition version 6.15. This software is widely used today and is accepted by law enforcement agencies throughout the United States and abroad. Encase has been tested in several court cases and has gained the approval of the courts as a software tool capable of generating court quality evidence. Transferring evidence files is facilitated when using Encase due to its wide acceptance and use. For these reasons the software was selected as the software to be used for this examination.

Once the target computer was identified and located, the Encase servlet was deployed and started on the computer. The servlet was configured so that it was incapable of making any changes to the hard drive once it was installed..

The Encase program was activated and the data from the hard drives was previewed for analysis. Previewing provides the examiner with the ability to quickly assess the data on the media and can provide a basis for closer examination of the most pertinent media.

The forensic analysis entailed a thorough review of all pertinent data on the hard drive. This analysis included data still resident on the media devices and identifiable through the operating system. Due to time constraints, data from unallocated clusters was not examined.

FORENSIC EXAMINER NAME	PHONE	INFORMATION SECURITY MANAGER	PHONE
Tim Gruber	407 828-3843	Dawn Ellis	407-828-1644
FORENSIC EXAMINER SIGNATURE	DATE	SECURITY MANAGER SIGNATURE	DATE
	02/09/2010		02/09/2010

Appendix A DETAILED EXAMINATION FINDINGS MAYA_1HP	CASE NUMBER 2010-002 Supplement 1
	PAGE 3 of 11 PAGES

"Movies" folder metadata and folder structure:

Name	Movies
Last Accessed	02/08/10 12:40:56
File Created	12/18/09 13:45:48
Last Written	01/05/10 17:33:33
Entry Modified	01/05/10 17:33:33
File Acquired	02/08/10 18:32:37
Logical Size	4,096
Initialized Size	4,096
Physical Size	4,096
Starting Extent	1C-C36967322
Full Path	MAYA_1HP, 167.13.14.60·1\C\Movies
Bookmark Path	NoName

```
└─Movies
  ├─=Moved to QT
  │ ├─Funny People
  │ └─It's Complicated
  │   ├─AUDIO_TS
  │   └─VIDEO_TS
  ├─Paths of Glory
  ├─Public Enemy
  │ ├─AUDIO_TS
  │ └─VIDEO_TS
  ├─The Fury
  └─Two Moon Junction
```

Appendix A DETAILED EXAMINATION FINDINGS MAYA_1HP	CASE NUMBER 2010-002 Supplement 1
	PAGE 4 of 11 PAGES

"=Moved to QT" folder metadata:

Name	=Moved to QT
Last Accessed	02/08/10 12:40:58
File Created	01/05/10 17:33:23
Last Written	01/05/10 17:33:33
Entry Modified	01/05/10 17:33:33
File Acquired	02/08/10 18:32:37
Full Path	MAYA_1HP, 167.13.14.60·1\C\Movies\=Moved to QT

Permissions

Name	[illegible]	[illegible]
Administrators	S-1-5-32-544	Allow
System	S-1-5-18	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Allow
Creator Owner	S-1-3-0	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Owner
Domain Users	S-1-5-21-3171633924-1924068845-2714224623-513	Group

"Funny People" folder metadata:

Name	Funny People
Last Accessed	02/08/10 12:40:58
File Created	12/18/09 14:32:11
Last Written	12/18/09 14:38:24
Entry Modified	01/05/10 17:33:33
File Acquired	02/08/10 18:32:37
Full Path	MAYA_1HP, 167.13.14.60·1\C\Movies\=Moved to QT\Funny People

Permissions

Name	[illegible]	[illegible]
Administrators	S-1-5-32-544	Allow
System	S-1-5-18	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Allow
Creator Owner	S-1-3-0	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Owner
Domain Users	S-1-5-21-3171633924-1924068845-2714224623-513	Group

Appendix A DETAILED EXAMINATION FINDINGS MAYA_1HP	CASE NUMBER 2010-002 Supplement 1
	PAGE 5 of 11 PAGES

"It's Complicated" folder metadata:

Name	It's Complicated
Description	Folder
Last Accessed	02/08/10 12:40:58
File Created	12/18/09 14:11:22
Last Written	12/18/09 14:17:55
Entry Modified	01/05/10 17:33:33
File Acquired	02/08/10 18:32:37
Full Path	MAYA_1HP, 167.13.14.60·1\C\Movies\=Moved to QT\It's Complicated

Permissions

[illegible]	[illegible]	[illegible]
Administrators	S-1-5-32-544	Allow
System	S-1-5-18	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Allow
Creator Owner	S-1-3-0	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Owner
Domain Users	S-1-5-21-3171633924-1924068845-2714224623-513	Group

"Paths of Glory" folder metadata:

Name	Paths of Glory
Description	Folder
Last Accessed	02/08/10 12:44:13
File Created	01/04/10 17:11:51
Last Written	01/04/10 17:11:57
Entry Modified	01/05/10 14:14:32
File Acquired	02/08/10 18:32:37
Full Path	ABC\ (MAYA_1HP, 167.13.14.60)·1\C\Movies\Paths of Glory

Permissions

[illegible]	[illegible]	[illegible]
Administrators	S-1-5-32-544	Allow
System	S-1-5-18	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Allow
Creator Owner	S-1-3-0	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Owner
Domain Users	S-1-5-21-3171633924-1924068845-2714224623-513	Group

Appendix A DETAILED EXAMINATION FINDINGS MAYA_1HP	CASE NUMBER 2010-002 Supplement 1 PAGE 6 of 11 PAGES

"Public Enemy" folder metadata:

Name	Public Enemy
Description	Folder
Last Accessed	02/08/10 12:44:12
File Created	12/18/09 13:46:29
Last Written	12/18/09 13:53:43
Entry Modified	12/18/09 13:53:43
File Acquired	02/08/10 18:32:37
Full Path	MAYA_1HP 167.13.14.60·1\C\Movies\Public Enemy
Short Name	PUBLIC~1
Sequence ID	1

Permissions

Name	ID	[illegible]
Administrators	S-1-5-32-544	Allow
System	S-1-5-18	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Allow
Creator Owner	S-1-3-0	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Owner
Domain Users	S-1-5-21-3171633924-1924068845-2714224623-513	Group

"The Fury" folder metadata:

Name	The Fury
Description	Folder
Last Accessed	02/08/10 12:44:13
File Created	01/05/10 11:53:47
Last Written	01/05/10 11:53:55
Entry Modified	01/05/10 11:53:55
File Acquired	02/08/10 18:32:37
Full Path	MAYA_1HP 167.13.14.60 ·1\C\Movies\The Fury

Permissions

Name	ID	[illegible]
Administrators	S-1-5-32-544	Allow
System	S-1-5-18	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Allow
Creator Owner	S-1-3-0	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Owner
Domain Users	S-1-5-21-3171633924-1924068845-2714224623-513	Group

Appendix A DETAILED EXAMINATION FINDINGS **MAYA_1HP**	CASE NUMBER 2010-002 Supplement 1
	PAGE 7 of 11 PAGES

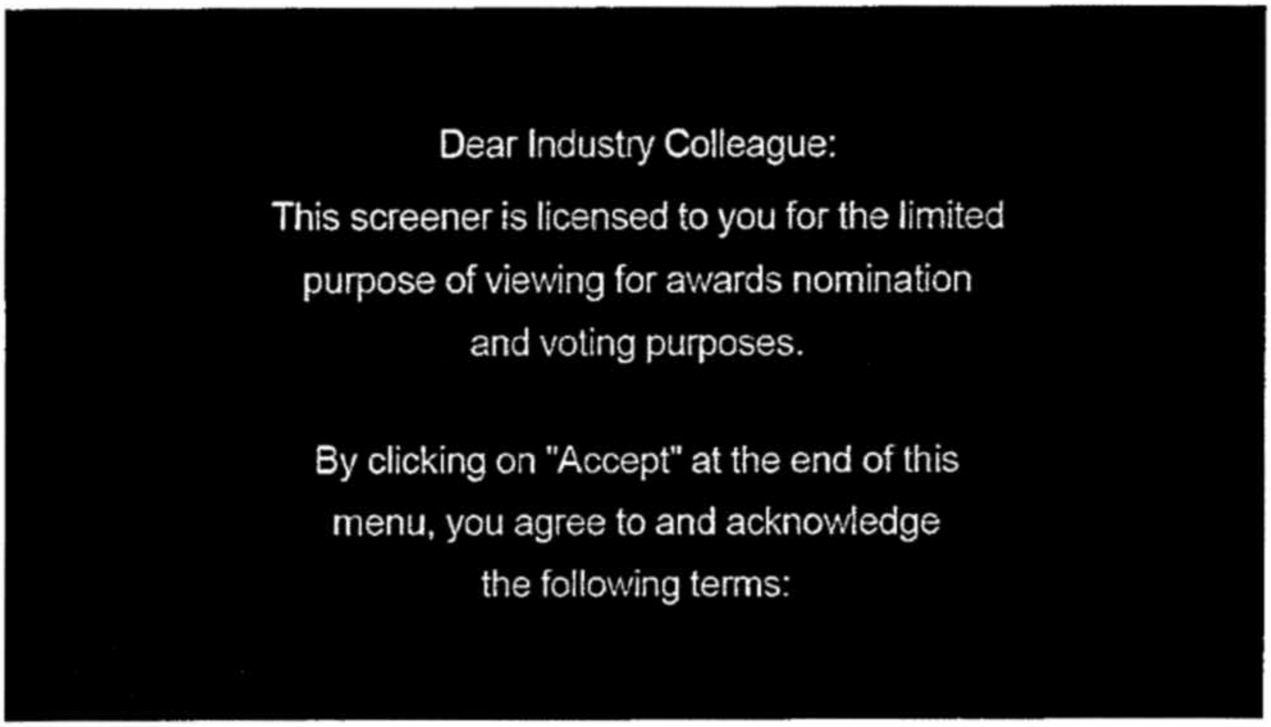
"Two Moon Junction" folder metadata:

Name	Two Moon Junction
Description	Folder
Last Accessed	02/08/10 12:44:13
File Created	01/05/10 11:53:59
Last Written	01/05/10 14:14:10
Entry Modified	01/05/10 14:14:10
File Acquired	02/08/10 18:32:37
Full Path	MAYA_1HP 167.13.14.60 ·1\C\Movies\Two Moon Junction

Permissions

Name	Id	[illegible]
Administrators	S-1-5-32-544	Allow
System	S-1-5-18	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Allow
Creator Owner	S-1-3-0	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
Users	S-1-5-32-545	Allow
	S-1-5-21-3171633924-1924068845-2714224623-1805	Owner
Domain Users	S-1-5-21-3171633924-1924068845-2714224623-513	Group

Screenshots from the DVD copy found on this computer:


Dear Industry Colleague:
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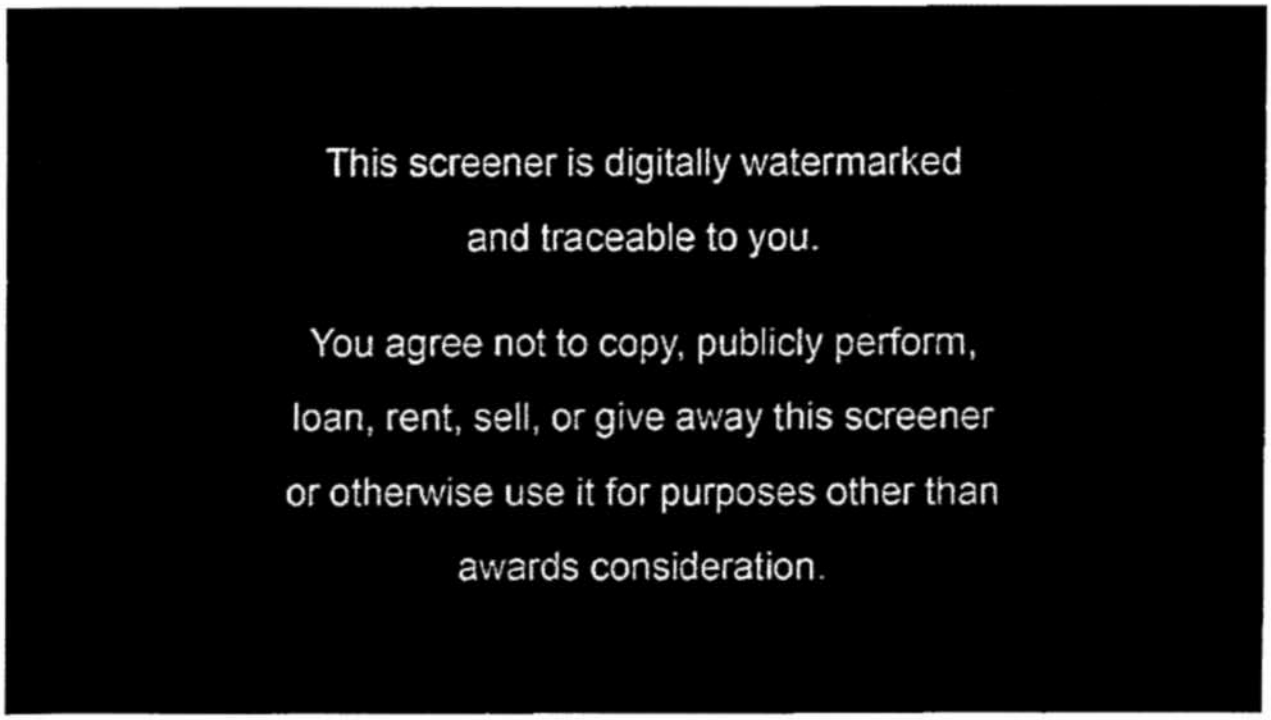
By clicking on "Accept" at the end of this menu, you agree to and acknowledge the following terms: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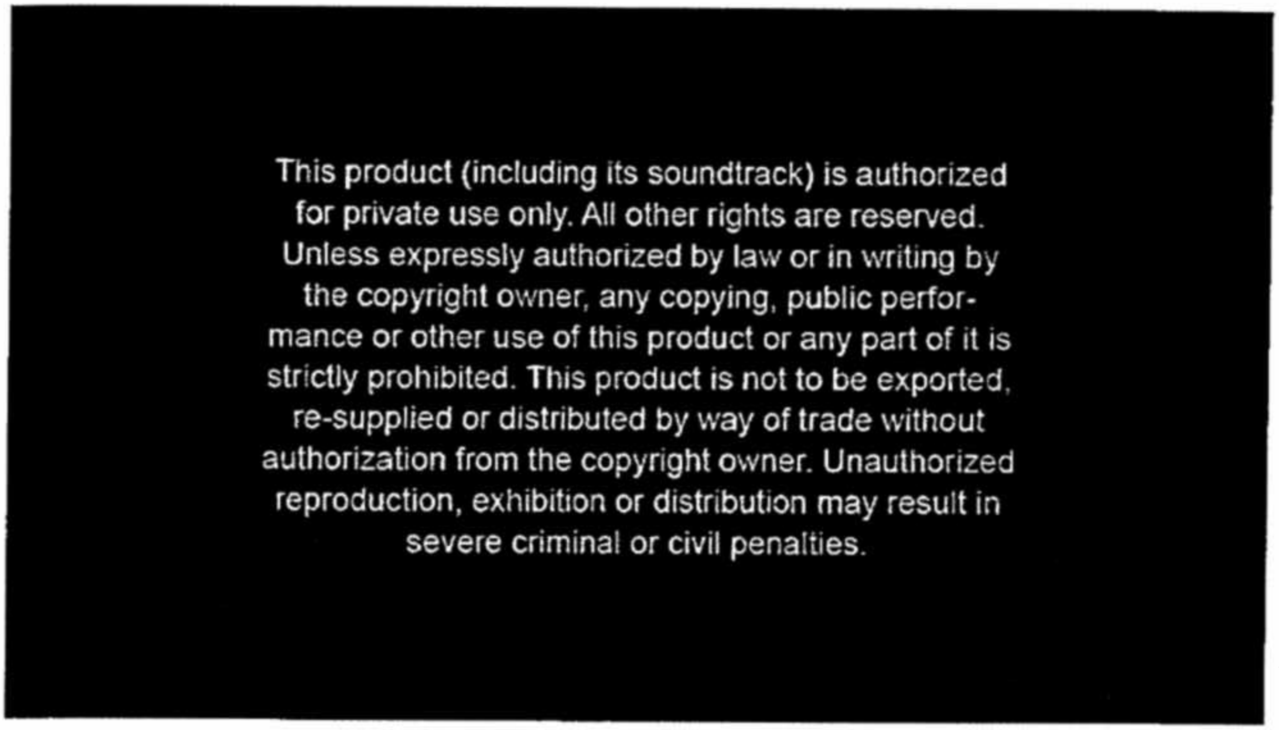
Appendix B DETAILED EXAMINATION FINDINGS MAYA_1HP	CASE NUMBER 2010-002 Supplement 1
	PAGE 9 of 11 PAGES

When you have finished viewing this disc
for awards purposes, please break it in half
or render it unplayable by anyone else.
Thank you for protecting this copy of our film.
ACCEPT
Note Activate your selection with the "ENTER" button

It's Complicated
FOR YOUR CONSIDERATION
Play
Play
With Captions
(For The Hearing Impaired)

Appendix B DETAILED EXAMINATION FINDINGS MAYA_1HP	CASE NUMBER 2010-002 Supplement 1
	PAGE 10 of 11 PAGES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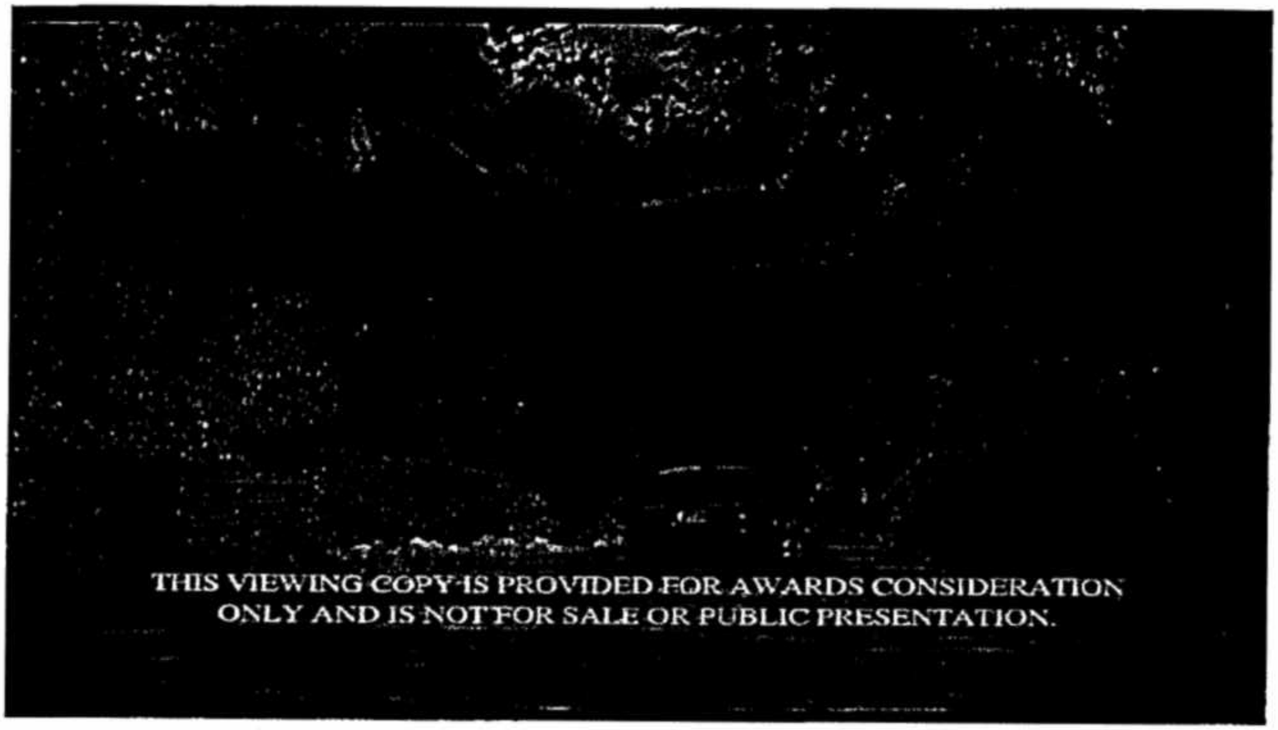
IT'S COMPLICATED

Appendix B DETAILED EXAMINATION FINDINGS MAYA_1HP	CASE NUMBER 2010-002 Supplement 1
	PAGE 11 of 11 PAGES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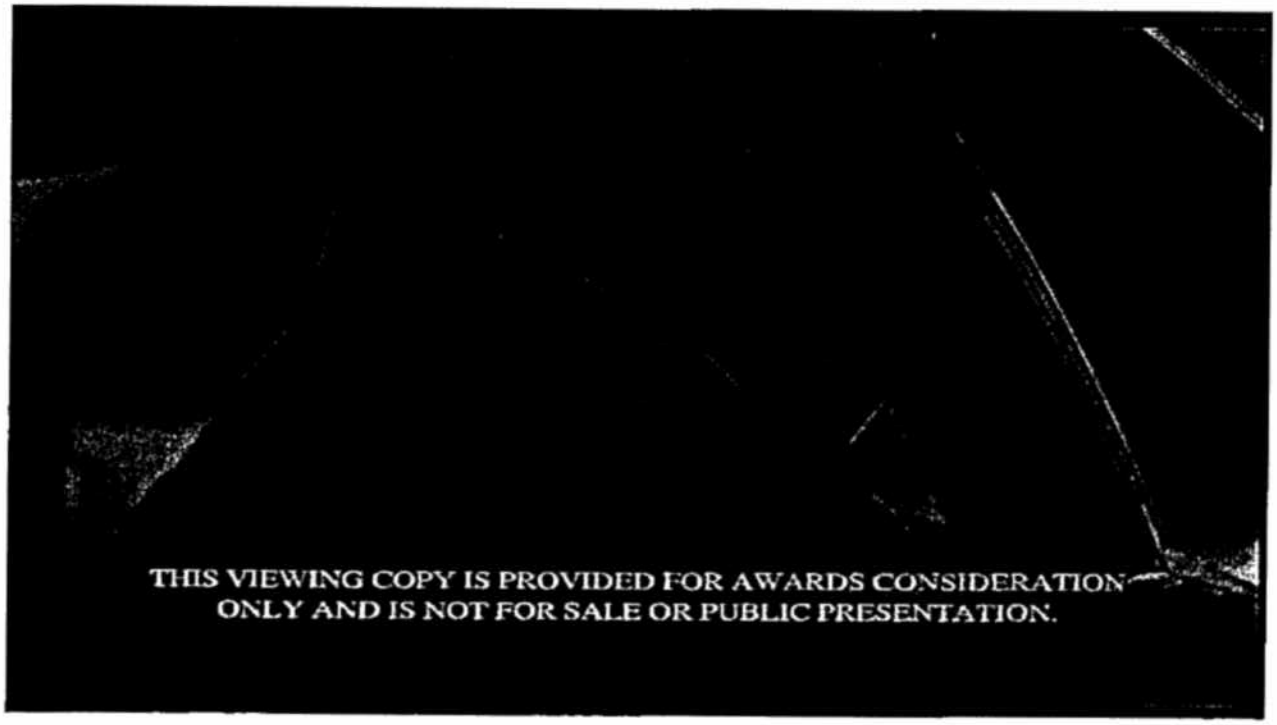
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